



U.S. Department of Justice

United States Attorney
Southern District of New York

MEMO ENDORSED

86 Chambers Street, 3rd floor
New York, New York 10007

February 6, 2018

By ECF

The Honorable William H. Pauley III
United States District Judge
United States District Court for
the Southern District of New York
500 Pearl Street
New York, New York 10007

Re: Mantena v. USCIS, et al., 17 Civ. 5142 (WHP)

Dear Judge Pauley:

This Office represents the government in the above-titled action. As the Court is aware, plaintiff has filed a motion for a preliminary injunction seeking to postpone the effectiveness of the denial of her I-485 applications for adjustment of status (ECF No. 65). Pursuant to the Court's scheduling order dated January 25, 2018 (ECF No. 66), the government's opposition to plaintiff's motion is due today.

We write respectfully to inform the Court, with the agreement of plaintiff's counsel, that plaintiff's motion for a preliminary injunction is now moot. On February 5, 2018, U.S. Citizenship and Immigration Services ("USCIS") reopened plaintiff's two I-485 applications. In light of this reopening, plaintiff has not accrued, and will not accrue, unlawful-presence time in the United States because of the previous denials of those applications. *See* USCIS, Donald Neufeld, Consolidation of Guidance Concerning Unlawful Presence for purposes of sections 212(a)(9)(B)(i) and 22(a)(9)(C)(i)(I) of the Act, May 6, 2009, *available at* https://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/Static_Files_Memoranda/2009/revision_redesign_AFM.PDF; *see also* *Aranas v. Napolitano*, SACV 12-1137 CBM (AJWx), 2014 WL 12745970, at *2 (C.D. Cal. Feb. 12, 2014) ("Defendants respond that in the Neufeld Memorandum, if USCIS reopens a previously denied but properly filed I-485 application, the application is deemed pending from the date of its initial filing, and during its pendency, the alien does not accrue unlawful presence.").

In light of the foregoing, the government respectfully requests that the Court adjourn the briefing schedule on plaintiff's motion for a preliminary injunction *sine die*, and order that the motion be withdrawn without prejudice. Plaintiff's counsel joins in this request.

I thank the Court for its consideration of this request.

Respectfully,

GEOFFRY S. BERMAN
United States Attorney for the
Southern District of New York

By: /s/ Nelsy De La Nuez
Nelsy De La Nuez
Special Assistant United States Attorney
Tel. (212) 637-2770
Fax (212) 637-2786

cc: Counsel of record (*by ECF*)

Application granted. On the parties' consent, Plaintiff's motion is moot and deemed withdrawn without prejudice. The briefing schedule is therefore adjourned sine die. Separately, the parties are directed to provide a status update regarding this action and propose any applicable deadlines they anticipate encountering in the future by no later than February 20, 2018.

SO ORDERED:



WILLIAM H. PAULEY III
U.S.D.J.

2-6-18